

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

February 1, 2007

In the Matter of
Mashpee School Department

Docket No. 2006-166
File No. 608-0
Mashpee

RECOMMENDED FINAL DECISION

The petitioner in this matter, The Mashpee School Department, filed a notice of claim for an adjudicatory hearing seeking review of a permit to discharge wastewater from the treatment facility at the Mashpee Junior and Senior High School. In response to an Order for a More Definite Statement the petitioner provided a complete copy of the permit being appealed on December 15, 2006. The submission included the Department's cover letter dated September 21, 2006 and a "Draft Permit." The cover letter explained that the enclosed permit is a draft, and that public notice and a thirty-day opportunity for comment and public hearing must be provided before the permit can be made final. Copies of the notice were included with instructions to have the notice published to start the public comment period.

I then ordered the petitioner to show cause why this appeal should not be dismissed as premature as there is no right to review in an adjudicatory hearing a draft groundwater discharge



permit issued under 314 CMR 2.05¹ The petitioner did not file any response to the Order to Show Cause.

I conclude that the agency action being appealed is the issuance of a draft discharge permit, and as such is not the agency's final permitting determination subject to review through an adjudicatory hearing. Once a final permitting decision is issued, after the draft permit is published and an opportunity for public comment is provided, a request for administrative review may be made in conformance with 314 CMR 2.08 and 310 CMR 1.01.

The petitioner's failure to respond to the Order to Show Cause might indicate agreement with its proposed conclusions and affirmatively provides separate grounds for dismissal of this Claim. Failure to respond to an Order is an indication that the party does not intend to continue prosecuting the appeal, and may result in the claim's dismissal. 310 CMR 1.01(5)(a)15.f.vi, 1.01(10)

I recommend that this claim for an adjudicatory hearing be dismissed pursuant to 310 CMR 1.01(5)(a)15.f.v. for lack of jurisdiction over the terms of a draft permit, and for lack of prosecution under 310 CMR 1.01(5)(a)15.f.vi. for the petitioner's failure to respond to the Order to Show Cause.

NOTICE

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for her final decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(d), and may not be

¹ A final permit issued after public comment is subject to review in an adjudicatory hearing as described in 314 CMR 2.08.

appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's final decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.

Ann Lowery
Presiding Officer

Adopted by Acting Commissioner Arleen O'Donnell February 2, 2007.